

1 HONORABLE ROBERT H. WHALEY
23 John G. Bergmann
4 Helsell Fetterman LLP
5 1001 Fourth Avenue, Suite 4200
6 Seattle, WA 98154
7 (206) 292-1144
8 Fax: (206) 340-0902
E-mail: jbergmann@helsell.com
9 Attorneys for Plaintiff10
11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON

13 OSCAR J. BROWNFIELD,

14 No. CV-08-3005-RHW

15 Plaintiff,

16 AGREED PRETRIAL ORDER

17 v.

18 May 22, 2009 @ 8:30 a.m.
Judge Robert W. Whaley19 CITY OF YAKIMA, a Municipal
20 Corporation,

21 Defendant.

22
23 A pretrial conference was held in the above entitled cause at Yakima,
24 Washington on May 22, 2009 with The Honorable Robert W. Whaley presiding.
25 Plaintiff was represented by John G. Bergmann and Lish Whitson and Defendant
was represented by Jerry J. Moberg, their respective attorneys of record. The
following pretrial order has been formulated and proposed as follows:26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
289
290
291
292
293
294
295
296
297
298
299
299
300
301
302
303
304
305
306
307
308
309
309
310
311
312
313
314
315
316
317
318
319
319
320
321
322
323
324
325
326
327
328
329
329
330
331
332
333
334
335
336
337
338
339
339
340
341
342
343
344
345
346
347
348
349
349
350
351
352
353
354
355
356
357
358
359
359
360
361
362
363
364
365
366
367
368
369
369
370
371
372
373
374
375
376
377
378
379
379
380
381
382
383
384
385
386
387
388
389
389
390
391
392
393
394
395
396
397
398
399
399
400
401
402
403
404
405
406
407
408
409
409
410
411
412
413
414
415
416
417
418
419
419
420
421
422
423
424
425
426
427
428
429
429
430
431
432
433
434
435
436
437
438
439
439
440
441
442
443
444
445
446
447
448
449
449
450
451
452
453
454
455
456
457
458
459
459
460
461
462
463
464
465
466
467
468
469
469
470
471
472
473
474
475
476
477
478
479
479
480
481
482
483
484
485
486
487
488
489
489
490
491
492
493
494
495
496
497
498
499
499
500
501
502
503
504
505
506
507
508
509
509
510
511
512
513
514
515
516
517
518
519
519
520
521
522
523
524
525
526
527
528
529
529
530
531
532
533
534
535
536
537
538
539
539
540
541
542
543
544
545
546
547
548
549
549
550
551
552
553
554
555
556
557
558
559
559
560
561
562
563
564
565
566
567
568
569
569
570
571
572
573
574
575
576
577
578
579
579
580
581
582
583
584
585
586
587
588
589
589
590
591
592
593
594
595
596
597
598
599
599
600
601
602
603
604
605
606
607
608
609
609
610
611
612
613
614
615
616
617
618
619
619
620
621
622
623
624
625
626
627
628
629
629
630
631
632
633
634
635
636
637
638
639
639
640
641
642
643
644
645
646
647
648
649
649
650
651
652
653
654
655
656
657
658
659
659
660
661
662
663
664
665
666
667
668
669
669
670
671
672
673
674
675
676
677
678
679
679
680
681
682
683
684
685
686
687
688
689
689
690
691
692
693
694
695
696
697
698
699
699
700
701
702
703
704
705
706
707
708
709
709
710
711
712
713
714
715
716
717
718
719
719
720
721
722
723
724
725
726
727
728
729
729
730
731
732
733
734
735
736
737
738
739
739
740
741
742
743
744
745
746
747
748
749
749
750
751
752
753
754
755
756
757
758
759
759
760
761
762
763
764
765
766
767
768
769
769
770
771
772
773
774
775
776
777
778
779
779
780
781
782
783
784
785
786
787
788
789
789
790
791
792
793
794
795
796
797
798
799
799
800
801
802
803
804
805
806
807
808
809
809
810
811
812
813
814
815
816
817
818
819
819
820
821
822
823
824
825
826
827
828
829
829
830
831
832
833
834
835
836
837
838
839
839
840
841
842
843
844
845
846
847
848
849
849
850
851
852
853
854
855
856
857
858
859
859
860
861
862
863
864
865
866
867
868
869
869
870
871
872
873
874
875
876
877
878
879
879
880
881
882
883
884
885
886
887
888
889
889
890
891
892
893
894
895
896
897
898
899
899
900
901
902
903
904
905
906
907
908
909
909
910
911
912
913
914
915
916
917
918
919
919
920
921
922
923
924
925
926
927
928
929
929
930
931
932
933
934
935
936
937
938
939
939
940
941
942
943
944
945
946
947
948
949
949
950
951
952
953
954
955
956
957
958
959
959
960
961
962
963
964
965
966
967
968
969
969
970
971
972
973
974
975
976
977
978
979
979
980
981
982
983
984
985
986
987
988
989
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1819
1820
1821
1822
1823
1824
1825
1826
1

NATURE OF PROCEEDINGS AND STATEMENT OF JURISDICTION

Plaintiff seeks money damages from the defendant, City of Yakima, his former employer, and makes claims under the Americans With Disabilities Act of 1990, 42 U.S.C. § 12111 et. seq., 42 U.S.C. § 12203(A), 42 U.S.C. 1983 alleging violation of his First Amendment Rights as applicable to the states by way of the Fourteenth Amendment, the Family Medical Leave Act of 1993, 29 U.S.C. § 2601 et. seq., and for discrimination in violation of the Washington Law against Discrimination.

Plaintiff alleges claims that comprise federal questions pursuant to 28 U.S.C. § 1331 and 1921. This Court has jurisdiction over plaintiff's related state claims pursuant to 28 U.S.C. §1367.

The following facts are agreed upon by the parties and require no proof:

1. Plaintiff was hired as a police officer for the City of Yakima on November 15, 1999.

2. Officer Brownfield was in a serious off-duty automobile accident on December 21, 2000. Officer Brownfield was seen by Dr. Richard Drew for a neuropsychological screening in January of 2001. He returned to light duty at the Yakima Police Department on March 1, 2001 and on full duty on July 6, of 2001.

3. Officer Brownfield was married to Leticia Brownfield during part of the time of his employment as a police officer.

HELSELL
FETTERMAN

4. Officer Brownfield returned to Dr. Drew in 2004 stating that he was having difficulty getting along at work, at home and personally.

5. From November 1, 2000 through October 31, 2004, Officer Brownfield received above average performance reviews.

6. In late 2002, Officer Brownfield was assigned to the community service division.

7. On January 23, 2007 Dick Zais ordered Officer Brownfield to report to Dr. Ekemo for a FFD evaluation.

8. Jeff Brownfield attended the first session with Dr. Ekemo on February 15, 2007. Dr. Ekemo asked him to return to complete additional testing.

9. On April 10, 2007 Jeff Brownfield was terminated.

PLAINTIFF'S CONTENTION

Plaintiff's contentions as to disputed issues are:

1. Plaintiff was hired as a police officer for the City of Yakima on November 15, 1999. He is the father of two young children, a Gulf War veteran and was a decorated police officer while employed with the City of Yakima.

2. Officer Brownfield was in a serious off-duty automobile accident on December 21, 2000. He recuperated and returned to light duty at the Yakima Police Department on March 1, 2001 and on full duty on July 6, of 2001.

HELSELL
FETTERMAN

1 3. Officer Brownfield was seen by Dr. Richard Drew for a
 2 neuropsychological screening in January of 2001. Dr. Drew noted in part that "the
 3 results of this evaluation indicate he is recovering nicely from his motor vehicle
 4 accident. He has returned to work and by his report is experiencing no problems
 5 with light duty. He also states: "There appears to be no reason why Mr.
 6 Brownfield cannot return to active duty in a gradual and supervised manner."

7
 8 4. Officer Brownfield was married to Leticia Brownfield during the
 9 time of his employment as a police officer. Mr. Brownfield had marital problems
 10 in 2004 after his wife started a job and their relationship began to deteriorate.
 11 Officer Brownfield returned to Dr. Drew in 2004 stating that he was having
 12 difficulty getting along at work, at home and personally.

13
 14 5. From November 1, 2000 through October 31, 2004, Officer
 15 Brownfield received above average performance reviews. Police Chief Granato
 16 commented on one of the reviews as follows: "Officer Brownfield has exemplified
 17 extraordinary commitment to the City of Yakima and the youth. I want to
 18 commend him in his initiative and leadership in the development of Y-PALS."

19
 20 6. In 2001, Officer Brownfield applied for a position with the DARE
 21 division. In this position, Officer Brownfield often acted as ambassador for the
 22 police department, teaching the DARE program in local elementary schools and
 23 working with schools, teachers and community leaders on behalf of Yakima's
 24 youth.

1 7. In late 2002, Officer Brownfield was assigned to the community
2 service division. Officer Brownfield was responsible for researching and helping
3 to develop the Yakima Police Athletic League (Y-PAL) which was a new program
4 in the police department. The department received two significant grants and
5 many donations for this program.

6 8. In 2004 Officer Brownfield received positive remarks on his police
7 department evaluation. Specifically, it was noted that "Officer Brownfield has
8 been an asset to the Yakima Police Department in the community services
9 division. He is constantly striving to come up with new programs. He does not
10 require constant supervision, for he knows that the tasks at hand have to be
11 accomplished. Officer Brownfield is an asset to the police department."

12 9. In 2003 and 2004 Officer Brownfield received the Yakima Police
13 Department's Outstanding Service Award.

14 10. In 2004 Officer Brownfield became concerned about what he
15 perceived to be unethical work practices within the PAL and DARE programs. On
16 June 17, 2004, he sent an interoffice memo to Sgt. Mike Amos outlining what he
17 believed was inappropriate conduct by a fellow officer and by Lt. Mike Merryman.
18 The memo to Sgt. Amos also reported inaccuracies in Y-PAL accounts.

19 11. On May 5, 2005, almost one year after Officer Brownfield's initial
20 inquiry into the conduct of Officer Dejournette and Lt. Merryman. Officer
21 Brownfield sent an email directly to Chief Granato requesting a meeting. In this
22

HELSELL
FETTERMAN

1 email, Officer Brownfield confided to the Chief that he believed that Lt. Merryman
 2 was conducting an undisclosed internal investigation on him and other officers.
 3 He also included in an email, documents and notes regarding Officer Dejournette.
 4 This information had been previously given to Sgt. Amos in his initial memo of
 5 June 17, 2004.

6 12. On May 10, 2005 Officer Brownfield sent an email to Lt. Merryman
 7 and Sgt. Amos to notify them that Crystal Dodge, an employee in the Community
 8 Services Division, was overworked and requesting help for employee Crystal
 9 Dodge.

10 13. On May 10, 2005 Sgt. Bob Hester, a union representative, requested
 11 that Sgt. Amos meet with Officer Brownfield and him. During this meeting,
 12 Officer Brownfield expressed his concern that Lt. Merryman was conducting an
 13 undisclosed internal investigation. Sgt. Amos told Officer Brownfield that he
 14 would arrange a meeting directly with Chief Granato to discuss his various
 15 concerns.

16 14. On May 11, 2005 in the company of Sgt. Amos, Officer Brownfield
 17 entered a meeting room where he thought he would be meeting with Chief
 18 Granato. When he arrived, he discovered the meeting was between Sgt. Amos, Lt.
 19 Merryman and himself.

20 15. During this meeting, Officer Brownfield became concerned because
 21 he thought he was going to discuss what he thought were improper actions or
 22

HELSELL
 FETTERMAN

1 omissions by Lt. Merryman with Chief Granato. He became upset and walked out.
 2 Lt. Merryman and Sgt. Amos told him to stay but he refused to come back without
 3 a union representative. Sgt. Amos followed Officer Brownfield out of the meeting.
 4 Officer Brownfield lost his temper with Sgt. Amos and disobeyed an order by Lt.
 5 Merryman to return to the meeting.

6 16. On May 11, 2005 Sgt. Amos sent Chief Granato a memo regarding
 7 the incidents that had transpired on May 10th and 11th. Officer Brownfield was
 8 notified that the department was initiating an internal investigation into the
 9 incident. While the internal investigation into his alleged insubordination was
 10 being investigated, Officer Brownfield was transferred from Community Services
 11 to patrol.

12 17. On June 8, 2005 Cpt. Copeland filed a Detailed Report regarding the
 13 department's investigation of Officer Brownfield's complaints regarding Officer
 14 Dejournette. Cpt. Copeland's report concluded "there are some performance
 15 issues raised that are valid points, and they should be documented on Ofc.
 16 Dejournette's next performance evaluation. It appears that Ofc. Dejournette did a
 17 rather poor job of keeping the books in order. I do agree that an audit of the PAL
 18 books should be done. I also feel that Ofc. Dejournette's failure to close his 2000
 19 fraud cases was inexcusable."

18. On July 28, 2005 Officer Brownfield was notified that he was being given a
 1
 24-hour suspension for insubordination because he walked out of his meeting with Lt.
 2
 3 Merryman on May 11, 2005.

19. Officer Brownfield's family physician has been Dr. Ray Gondo. Dr. Gondo
 4 had seen Officer Brownfield over the years for various matters. Ultimately, Officer
 5 Brownfield was diagnosed with hypogonadism and has been receiving testosterone shots
 6 since the diagnosis.
 7

20. On September 1, 2005 Officer Brownfield and Officer Illeanna Salinas had a
 9 heated discussion during muster where both officers had elevated voices. There was no
 10 intimidating behavior by either officer and both officers remained seated during the entire
 11 exchange. Following the argument between the officers, Sgt. Linda Watts called each
 12 officer into her office at separate times. She informed both officers that "the type of
 13 behavior that occurred between the two of them was inappropriate." It is clear from Sgt.
 14 Watts' September 21, 2005 statement that she thought both officers acted inappropriately.
 15

21. In August 2005, Officer Brownfield called for backup while on patrol. Sgt.
 17 Chad Stephens responded to his request. Brownfield had stopped an individual suspected of
 18 numerous crimes, including violent crimes. During the encounter Brownfield was "being
 19 yelled at by acquaintances of the subjects that he stopped." While Sgt. Stephens was on the
 20 scene "the adult male insinuated that he could take Officer Brownfield. Officer Brownfield
 21 walked towards him and told him that he would "flatten" him if the subject got any more
 22 aggressive" but he did not threaten to "flatten" a 12 year old boy who was at the scene. Capt.
 23 Copeland questioned Officer Brownfield's exercise of judgment in calling for back-up.
 24
 25

HELSELL
 FETTERMAN

1 However, he later admitted during his deposition that, as a matter of department policy,
 2 officers are required to request back-up during a felony traffic stop. Despite acknowledging
 3 that Officer Brownfield correctly requested back-up while on patrol, Captain Copeland
 4 reported this incident to Dr. Decker as an incident allegedly justify the referral for a Fitness

5 22. On September 15, 2005, Chief Granato ordered Capt. Copeland to conduct an
 6 internal investigation into Officer Brownfield's alleged intimidating behavior toward Officer
 7 Salinas. After Officer Brownfield was notified that the department was doing an internal
 8 investigation into this matter and only with respect to him, he went to Sgt. Watts and
 9 requested to speak with Lt. Wentz and her. He was angry and felt like he was being
 10 "singled out."

12 23. After investigating the incident, Capt. Copeland ultimately found that the
 13 situation as a whole did not constitute harassment and he found Chief Granato's allegation
 14 to be without merit. He nevertheless put it into his referral letter to Dr. Decker.

16 24. In his deposition Capt. Copeland conceded that prior to Chief Granato's order
 17 to investigate the Salinas matter, Capt. Copeland had never been asked to conduct an
 18 internal investigation of that kind.

19 25. Following the favorable resolution of the alleged "harassment" investigation,
 20 on September 28, 2005 Capt. Copeland placed Officer Brownfield on administrative leave
 21 and ordered him to submit to a fitness for duty (FFD) examination at Dr. Kathleen Decker's
 22 office. Dr. Decker was a Seattle psychiatrist who the City of Yakima was using at the time
 23 to perform FFDs on some of its employees...

1 26. Capt. Copeland repeatedly failed to provide substantive reasons for ordering
 2 Officer Brownfield to attend a FFD examination. However, in his Memo to Dr. Decker he
 3 provides a plethora of innuendos, gossip, and reports that are refuted by other people. Had
 4 Capt. Copeland taken the time to investigate these “facts” his memo to Dr. Decker would
 5 have been a much different and less prejudicial document.

6 27. Officer Brownfield’s participation in mixed martial arts fighting apparently
 7 was a major reason for Copeland’s recommendation that Officer Brownfield undergo a FFD
 8 evaluation. Paradoxically, on numerous occasions, Copeland had commended Officer
 9 Brownfield on his training in mixed martial arts and told him he was proud that he had
 10 recovered and could participate in mixed martial arts training. On Officer Brownfield’s
 11 doctors, Leslie R. Bornfleth, M.D., a neurosurgeon commended Officer Brownfield for this
 12 training. Captain Copeland noted Officer Brownfield’s participation in mixed martial arts to
 13 Dr. Decker.

16 28. The same month that Officer Brownfield was placed on administrative leave
 17 and ordered to attend a FFD evaluation; he received a Certificate of Appreciation for his
 18 service and support in the Yakima Police Athletic League.

19 29. The City’s policies permit it to require police officers to submit to FFD
 20 examinations if the City has probable cause to believe that an officer was not fit for duty.
 21 However, the City never articulated their reason for sending Officer Brownfield to a FFD
 22 examination.

24 30. In May of 2005 Officer Brownfield’s relationship with his wife had gotten
 25 worse and they separated. This created a great deal of tension and stress for Officer

HELSELL
FETTERMAN

Helsell Fetterman, LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HESELL.COM

1 Brownfield. During 2005, Brownfield also discovered that his wife had been having an
 2 extra-marital affair with one of her co-workers.

3 31. On November 10, 2005 Lt. Tom Foley reported to Capt. Copeland that Ms.
 4 Brownfield had reported that she and Officer Brownfield had mutual protection orders
 5 regarding each other because of their divorce and that she felt Officer Brownfield had
 6 violated the order by leaving a message on her answering machine. In her discussion with
 7 Lt. Foley, Ms. Brownfield clearly stated that she did not want Officer Brownfield to get into
 8 trouble. Lt. Foley reported that he "heard no direct or implied threat" in the message that
 9 Officer Brownfield had left on Ms. Brownfield's answering machine. However, Captain
 10 Copeland provided this information to Dr. Decker.

12 32. On December 1, 2005 Officer Brownfield was in a car accident on his way to
 13 see Dr. G.A. DeAndrea as part of his FFD. He did not suffer any permanent sequelae as a
 14 result of that accident. Officer Brownfield also sought the treatment of Dr. Gondo for soft
 15 tissue neck pain.

17 33. On December 12, 2005 Dr. Decker reported that in her opinion Officer
 18 Brownfield was permanently unfit for duty as a police officer. Then on January 5, 2006, as
 19 result of Dr. Decker's report, Officer Brownfield was taken off of paid administrative leave
 20 and placed on sick leave. On January 12, 2006 Officer Brownfield was notified of his rights
 21 under the FMLA and was placed on unpaid FMLA leave retroactive to January 5, 2006. On
 22 January 5, 2006 Chief Granato informed Officer Brownfield that his FFD had not been for
 23 the purpose of either diagnosis or treatment.

1 34. On January 26, 2006 Officer Brownfield was told that he was being taken off
 2 of administrative leave and placed on FMLA. An FMLA application was filled out and
 3 signed by Officer Brownfield, Capt. Copeland and Chief Granato requesting leave for what
 4 was characterized as a personal serious illness. Contrary to the City's claim, the application
 5 does not request leave related to psychological issues. If the City's contention in that regard
 6 is based on the report by Dr. Decker and Dr. Decker's one meeting with Officer Brownfield
 7 was not for purposes of diagnosis or treatment, the City is making that assertion with no
 8 factual proof.

10 35. On February 3, 2006, Dr. Gondo certified, "I have approved that the patient
 11 may return to his previous work at full duty status in reference to 1/05/06 Family Medical
 12 Leave Act." However, the City refused to reinstate Officer Brownfield to active duty. On
 13 March 13, 2006 Officer Brownfield was returned to administrative leave status.
 14

15 36. On May 25, 2006 Officer Brownfield was served with a notice of a pre-
 16 termination hearing, allegedly because he had been determined unfit for duty by Dr. Decker.

17 37. On May 25, 2006, allegedly based upon Dr. Decker's report, Chief Granato
 18 and Capt. Copeland notified Officer Brownfield that the City had reasonable cause to
 19 terminate him as a police officer for his alleged inability to perform the essential functions
 20 of his position with or without accommodation. A pre-termination hearing was scheduled for
 21 June 2, 2006.

23 38. After Officer Brownfield was served with the notice of pre-termination
 24 hearing, Jim Cline, the attorney for the Yakima police union, hired Dr. Norman Mar to do
 25 another FFD evaluation. In his first report, on May 30, 2006, Dr. Mar concluded that he

HELSSELL
FETTERMAN

Helsell Fetterman, LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HESELL.COM

1 was" unable to definitely conclude one way or the other in this matter given the
 2 discrepancies in the various reports." Dr. Mar also notes, "I am struck by the finality of Dr.
 3 Decker's opinion [a psychiatrist alleging permanent brain damage] while Dr. G. A.
 4 DeAndrea [a neurologist] and Dr. Drew [a neurologist] do not characterize Officer
 5 Brownfield's symptoms as untreatable. In fact, Dr. Drew's reports noted continuing
 6 improvement in Officer Brownfield's adjustment to his accident-related injuries, including
 7 the psychological components."

9 39. On May 31, 2006, Chief Granato responded to a request by Jim Cline to re-
 10 schedule the hearing to allow Officer Brownfield to obtain additional medical information.
 11 On July 25, 2006, Officer Brownfield was given notice that a pre-termination hearing was
 12 set for August 3, 2006. That pre-termination hearing was held on that date.

13 40. On August 3, 2006, Dr. Mar wrote a second report regarding Officer
 14 Brownfield. He strongly recommended that Officer Brownfield be directed to seek
 15 counseling or psychotherapy with a qualified licensed mental health provider. "Officer
 16 Brownfield acknowledged his issues and is highly motivated to change." "It is likely, given
 17 Officer Brownfield's current high level of motivation for treatment and given a very
 18 intensive and aggressive course of treatment, he will be able to return to his full range of
 19 duties in about three months." On August 14, 2006 Dr. Decker reviewed Dr. Mar's report
 20 and again said she thought Officer Brownfield was unfit for duty.

23 41. On August 22, 2006, Dick Zais advised Officer Brownfield he would agree to
 24 meet with him for a pre-termination hearing prior to making a final determination on his job
 25 status. The meeting was set for September 6, 2006. At that pre-termination hearing, Zais

HELSELL
 FETTERMAN

1 informed Officer Brownfield that he would allow him six additional weeks to complete the
 2 treatment recommended by Dr. Mar, and further evaluations by Dr. Decker and Dr. Mar
 3 would take place after that. The Interoffice Memo from Capt. Copeland regarding the pre-
 4 termination meeting did not address the City's assertion that it informed Officer Brownfield
 5 that it may elect to send him to a third medical professional for an evaluation.

6 42. On November 29, 2006 Officer Brownfield applied for FMLA retro-active
 7 from August 3, 2006 until he returned to work in approximately 3 months. That application
 8 was based on Dr. Mar's August 3, 2006 findings that he would be able to return to his full
 9 and normal range of duties in about three months. His request was denied on December 13,
 10 2006.

12 43. On December 22, 2006 Dr. Mar wrote Jim Cline advising him that Officer
 13 Brownfield had been making "excellent" progress with Dr. Robert Newell. Dr. Mar
 14 concluded that "Given Mr. Brownfield's treatment progress and with continued treatment, it
 15 is my opinion that Mr. Brownfield would be able to return to his full and normal range of
 16 duties as a Yakima Police Officer."

18 44. The City alleges that Dr. Mar did not know Officer Brownfield successfully
 19 completed the course of treatment with Dr. Newell. The City had the opportunity to find out
 20 the status of Officer Brownfield's treatment with Dr. Newell. Officer Brownfield was
 21 actively treating with Dr. Newell from September 2006 to February 2007. Officer
 22 Brownfield only stopped treatment from February 2007 to July 2007 because he was having
 23 difficulty paying for the treatment. His financial problems resulted from being placed on
 24 unpaid leave as a result of the City's response to Dr. Decker's report. Dr. Newell, who saw
 25

HELSELL
 FETTERMAN

Helsell Fetterman, LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HESELL.COM

1 Officer Brownfield many times over a series of months, significantly differs from Dr.
 2 Decker's findings. "In my assessment of Mr. Brownfield I did not determine that impulsive
 3 behavior or a tendency to react impulsively was a significant treatment issue." It should be
 4 noted that Dr. Decker only saw Officer Brownfield one time.

5 45. After receiving Dr. Mar's December 22, 2006 report, the City referred it to
 6 Dr. Decker and to a psychologist, Bill Ekemo, PhD for evaluation. The City wrote to Dr.
 7 Ekemo that Dr. Decker "has recommended that we retain your services to conduct the
 8 Neuropsychological portion of the FFD exam. Dr. Decker will be making the final
 9 recommendation once she has received your material."

10 46. On January 17, 2007 Officer Brownfield advised Capt. Copeland that he had
 11 given Dr. Decker a 90-day notice of intent to possibly sue her for illegally releasing his
 12 records and from medical malpractice. As a result of this the City apparently decided that
 13 the FFD would be completed solely by Dr. Ekemo.
 14

15 47. On January 23, 2007 Dick Zais ordered Officer Brownfield to report to Dr.
 16 Ekemo for a FFD evaluation.
 17

18 48. On February 12, 2007 Officer Brownfield responded to this order by
 19 requesting clarification of the reasons that the City ordered him for a FFD with Dr. Ekemo.
 20 In his response, Officer Brownfield clearly notes his objections to this FFD but agrees to go
 21 back to see Dr. Ekemo when the city provides specific duty related incidents that justify the
 22 order.
 23

24 49. On February 13, 2007 Dick Zais responded to Officer Brownfield's request
 25 for clarification, but failed to articulated the City's duty to relate specific incidents that

HELSELL
 FETTERMAN

Helsell Fetterman, LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HESELL.COM

1 justify sending him to a third FFD evaluation, especially since numerous medical care
2 providers had determined he would be fit for duty with continued treatment.

3 50. On February 27, 2007 Dr. Ekemo notified the YPD that Officer Brownfield
4 came in to see him on February 15, 2007, but that he would need to continue the assessment
5 by giving Officer Brownfield some of the same types of tests that had been administered by
6 other evaluators and treaters. There is no explanation for why additional tests were
7 necessary.

8 51. On March 8, 2007, Dick Zais issued an amended notice of pre-termination
9 hearing to Officer Brownfield setting the pre-termination hearing for March 19, 2007. The
10 pre-termination hearing was held on that date. On April 10, 2007, Dick Zais notified Officer
11 Brownfield that he was terminated for insubordination because he refused Mr. Zais's order
12 to complete a third FFD evaluation with Dr. Ekemo and because Dr. Decker had said he was
13 unfit.

14 52. In late 2007, Dr. Decker was informed by the Office for Civil Rights that she
15 violated Officer Brownfield's privacy rights by failing to comply with the Health Insurance
16 Portability & Accountability Act (HIPAA). Further, on May 30, 2008 Dr. Decker was
17 informed by the Office for Civil Rights that none of the "Fit for Duty Evaluation
18 Acknowledgments" she had Officer Brownfield sign qualified under the Privacy Rule as a
19 valid authorization for any of her disclosures to Officer Brownfield's employer. This was
20 also true of several of the "Release of Information Authorization" forms she had Officer
21 Brownfield sign.

1 53. On May 7, 2007 the police union filed a notice of appeal of Officer
 2 Brownfield's termination with Capt. Schneider. On May 18, 2007, Capt. Schneider
 3 denied the union's grievance on procedural grounds. On June 4, 2007, the union
 4 filed its grievance regarding Officer Brownfield's termination with Dick Zais. On
 5 July 13, 2007 Dick Zais denied the union's grievance.
 6

7 54. Chief Samuel Granato was hired as Chief of Police for the City of
 8 Yakima in September of 2003. Prior to become the City of Yakima Chief of Police,
 9 Chief Granato was terminated as Chief of Police in Kingsville, Texas in July of
 10 2003 for insubordination.

11 55. A careful investigation of Chief Granato's history with the Corpus
 12 Christi, Texas Police department and the Kingsville, Texas Police Department
 13 would have disclosed a history of suits against Granato for retaliation,
 14 discrimination and wrongful termination, a pending criminal indictment for
 15 interference with an ongoing criminal investigation, conflicts with his city
 16 manager and with the Kleberg County Sheriff.
 17

18 56. Prior to his position in Kingsville, Texas, Chief Granato served all
 19 ranks up to Capt. in Corpus Christi, Texas. While working in Corpus Christi,
 20 Chief Granato was sued by police officer, Kelly Lewis, for violation of the state
 21 Whistleblower Statute. The city of Corpus Christi eventually settled with Officer
 22 Lewis.
 23

HELSELL
 FETTERMAN

1 57. Chief Granato was hired by the Kingsville Police Department on
 2 September 11, 2000. In 2001, Sgt. Arthur Rogers sued the Kingsville PD for
 3 wrongful termination and discrimination. The claim was settled for \$207,500.
 4 Rogers is now the Chief of Police in Yoakum, Texas.

5 58. On March 22, 2002 Corpus Christi police officers filed an Offense
 6 Report against Chief Granato for compromising an undercover investigation.
 7 Around May of 2003, Chief Granato was subject of a felony grand jury indictment
 8 for his conduct as Chief of Police in Kingsville, Texas. The indictment was for
 9 felony retaliation. The Grand Jury alleged that Chief Granato had transferred
 10 police officers out of the command of Lt. Alveraz in retaliation because Lt. Alveraz
 11 gave testimony to the Grand Jury which resulted in indictments.
 12

13 59. On June 20, 2003, Carlos Valdez the District Attorney in for the 105th
 14 Judicial District of Texas, wrote a letter to the City of Kingsville Interim City
 15 Manager regarding Chief Granato's criminal behavior. Specifically, he notes "It
 16 has come to my attention that Chief Sam Granato is attempting to interfere with
 17 an ongoing criminal investigation and also tampering with and attempting to
 18 intimidate a witness in two pending criminal case."

21 60. In 2003, Capt. Schneider was commissioned by the City of Yakima to
 22 do a pre-employment background investigation of Chief Granato. Capt. Schneider
 23 traveled to Corpus Christi, TX and Kingsville, TX to conduct a pre-employment
 24 background investigation. Prior to Capt. Schneider's trip to Texas, Waldron &
 25

HESELL
 FETTERMAN

Helsell Fetterman, LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HESELL.COM

1 Company did an initial screening of Chief Granato. Capt. Schneider never spoke
 2 with anyone at Waldron regarding their initial screening.

3 61. During Capt. Schneider's pre-employment background investigation,
 4 he learned that the "DA called for a grand jury investigation, which resulted in an
 5 indictment of the union and a sergeant in the department." In Capt. Schneider's
 6 handwritten notes he commented that "the investigation is ongoing and may
 7 result in an indictment of Granato possibly for perjury."

9 62. Although Capt. Schneider was informed of Lt. Alvarez's complaint
 10 against Chief Granato during his investigation, he did not interview Lt. Alvarez. It
 11 is clear that Sheriff Gonzales, a Texas sheriff, had given Capt. Schneider
 12 information about how to contact Arthur Rogers. During his investigation Capt.
 13 Schneider also failed to interview Arthur Rogers.

15 63. While Capt. Schneider was conducting his investigation, Chief
 16 Granato was placed on administrative leave from the Kingsville Police Department
 17 and he was asked to resign.

19 64. After returning from Texas, Capt. Schneider gave City Manager Zais
 20 a verbal report based on the information he gathered on Chief Granato. City
 21 Manager Zais knew about the felony retaliation charges and the pending
 22 indictment of Chief Granato prior to hiring him as the Chief of Police. However,
 23 despite receiving this information Zais "Felt confident that we could go forward,
 24 that I could make that appointment and feel confident at the end of the day the

HESELL
FETTERMAN

Helsell Fetterman, LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HESELL.COM

1 chief would be exonerated from those allegations" in Texas. In his deposition
 2 testimony Zais admitted that he did not know why Capt. Schneider failed to talk
 3 to Chief Roger, Sam Granato's main adversary in Texas.

4
 5 DEFENDANT'S CONTENTIONS
 6

7 Defendant's contentions as to disputed issues are:

8 1. Yakima did not consider plaintiff disabled when they referred him to a
 9 fitness for duty examination.

10 2. Plaintiff cannot establish that he was able to perform the job with or
 11 without accommodation.

12 3. Brownfield's termination was based on a legitimate non-discriminatory
 13 reason.

14 4. Yakima complied with the ADA requirements for a fitness-for-duty
 15 examination.

16 5. Plaintiff cannot establish a 42 USC § 1983 First Amendment Claim.

17 6. His First Amendment Claim involves matters of private concern and are
 18 unprotected speech.

19 7. Plaintiff cannot establish a causal link between his speech and his later
 20 termination.

21 8. Plaintiff cannot establish a Retaliation claim under the Washington law
 22 against discrimination.

23 9. Plaintiff did not oppose a forbidden practice.

24

10. Plaintiff cannot establish a link between his termination and any alleged
protected activity.
11. Plaintiff cannot prove the reason for termination was a pretext.
12. Plaintiff cannot establish a claim under the Family Medical Leave Act
(FMLA) 29 USC §2601.
13. Yakima's refusal to return Plaintiff to work was not a violation of FMLA.
14. Dr. Ekemo's Evaluation was permitted by both FMLA and ADA.
15. Capt. Copeland's Referral of plaintiff to Dr. Decker and Dr. Ekemo
complied with both the FMLA and ADA.
16. Plaintiff cannot establish a state law claim alleging negligent hiring and
retention of Chief Granato.
17. Plaintiff has not suffered any compensable damages for which Defendant
would be liable.
18. Plaintiff was properly and lawfully terminated from his employment for
insubordination for not attending the FFDE of Dr. Ekemo and because he
was psychologically unfit for duty.

ISSUES OF FACT

The following are the issues of fact to be determined by trial: The plaintiff is required to prove all facts necessary to establish the elements of any surviving cause of action and the Defendant is required to prove all the necessary elements of any affirmative defense related to surviving causes of action. The listing of factual issues remaining in this case is not meant to be inclusive.

HELSELL
FETTERMAN

1. What injuries did Officer Brownfield sustain in his December 2000
 2 off duty motor vehicle accident and were any of those injuries permanent?

3. Following his return to work was Officer Brownfield's ability to
 4 perform the essential duties of his position at any time substantially and
 5 injuriously impacted by injuries received from his December 2000 accident?

6 [Defendant objects to this paragraph and claims that substantially and
 7 injuriously impacted is not the proper legal standard.]

9. Did the Defendant City of Yakima's order that Officer Brownfield
 10 submit to a Fitness for Duty examination conform to the ADA business necessity
 11 exception?

12. Did Chief Granato directly, or acting through his subordinate
 13 officers, retaliate against Officer Brownfield for any actions Officer Brownfield
 14 took with respect to the conduct of other YPD officers and/or superiors in his
 15 chain of command?

17. Did the Defendant City of Yakima subject Officer Brownfield to a
 18 fitness for duty examination in violation of the ADA?

20. Did the City retaliate when Officer Brownfield attempted to assert
 21 his rights under the Americans with Disabilities Act?

22. Were the City's actions in ordering Officer Brownfield to Fitness for
 23 Duty examinations a pretext for discrimination and retaliation?

HELSELL
 FETTERMAN

Helsell Fetterman, LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154-1154
 206.292.1144 WWW.HESELL.COM

1 8. Were there specific impairments that would justify a referral for a
 2 psychological Fitness for Duty examination?

3 9. Did the Defendant City treat other YPD officers, who were known
 4 friends of the chief, differently for conduct that was similar or worse than the
 5 conduct of Officer Brownfield?

6 [Defendant objects to this paragraph and does not believe that this factual
 7 issue is material to this case. This is a “class of one” argument that is irrelevant.]

8 10. Was Officer Brownfield the subject of an adverse employment
 9 action?

10 11. Was there a causal link between his protected activity and the
 12 adverse action taken by the City?

13 12. Did the City perceive Officer Brownfield to be disabled within the
 14 meaning of the Washington Law Against Discrimination?

15 13. Did the City produce a legitimate nondiscriminatory explanation for
 16 its adverse employment action?

17 14. Did Officer Brownfield suffer an adverse employment action?

18 15. If so did Officer Brownfield produce evidence that the City's stated
 19 explanation was pre-textual?

20 16. Did the City ever identify the essential functions of his job that
 21 Officer Brownfield was allegedly no longer capable of performing?

22
 23
 24
 25

HELSELL
 FETTERMAN

1 [Defendant objects to this paragraph. This is irrelevant to the issues in this
2 case.]

3 17. Was Officer Brownfield's email to Chief Granato protected speech? If
4 so, was it a substantial or motivating factor in the City's actions against him?

5 18. If the speech was protected, did Officer Brownfield's complaint
6 outweigh the City's interest in promoting the efficient delivery of public services?

7 19. After the City placed Officer Brownfield on Family Medical Leave
8 Act benefits on January 5, 2006 following Dr. Decker's statement that Officer
9 Brownfield was unfit for duty, did the City require Officer Brownfield to provide a
10 fitness for duty certification from his doctor before it would restore him to active
11 duty?

12 20. Did Officer Brownfield provide a certification from his family doctor,
13 Dr. Gondo, that he was fit for duty?

14 21. After submission of the certification from Dr. Gondo, did the City
15 restore Officer Brownfield to duty?

16 22. Did the City hire Sam Granato knowing that he had been fired as
17 Chief of the Kingsville, Texas Police Department?

18 23. Did the City hire Sam Granato knowing that he had been sued for
19 retaliation under Texas Whistleblower laws for his conduct while with the Corpus
20 Christi, Texas police department?

24. Did the City hire Sam Granato knowing that he and the Kingsville, Texas police department had been sued for wrongful termination and discrimination by Kingsville Sgt. Arthur Rogers?

25. Did the City Hire Sam Granato knowing that the Rogers claim had been settled for over \$200,000.00?

26. Did the City hire Sam Granato without even interviewing Arthur Rogers who is now the Chief of the Police Department in Yoakum, Texas?

27. Did the City hire Sam Granato knowing that City of Kingsville had initiated a criminal investigation into Sam Granato's tampering with or intimidating a witness in an ongoing criminal investigation?

ISSUES OF LAW

The following are the issues of law to be determined by the Court:

1. As a matter of law, did the City violate the ADA, 42 U.S.C. § 12111 et. seq. when it ordered Officer Brownfield to submit to the initial fitness for duty examination?

2. As a matter of law, did the City violate the ADA, 42 U.S.C. § 12203(a), by retaliating against Officer Brownfield for asserting his right under the ADA not to submit to fitness for duty exam?

3. As a matter of law under WLAD, is an employee perceived to be disabled when his employer: (a) places him on administrative leave; (b) orders

HESELL
FETTERMAN

1 him to attend a series of fitness for duty examinations; and (c) is adjudged unfit
 2 for duty by the medical doctor commissioned by the employer to perform the
 3 examination?

4 4. As a matter of law, once the City placed Officer Brownfield on FMLA
 5 leave on Jan. 5, 2006, following receipt of Dr. Decker's opinion that he was unfit
 6 for duty, did the FMLA (and not the ADA) control the manner by which Ofc.
 7 Brownfield could be returned to active duty?

9 5. As a matter of law, did the City violate the FMLA when it: (a) refused
 10 to restore Officer Brownfield to active duty, see 29 C.F.R. § 825.312; (b) when it
 11 refused to honor Dr. Gondo's fitness for duty certification, *Id.*; (c) when it took
 12 Ofc. Brownfield off FMLA leave and placed him on administrative leave; (d) when
 13 it contacted Dr. Gondo without first obtaining Ofc. Brownfield's consent or
 14 allowing him to cure his fitness for duty certification, see 29 C.F.R. §§ 825.307(a),
 15 312(b); (e) when it required a second or third medical opinion and ordered Officer
 16 Brownfield to see Dr. Ekemo a second time, see 29 C.F.R. § 825.312(b); (f) when it
 17 terminated Officer Brownfield for refusing to obey that order, which was unlawful
 18 under the FMLA?

21 [Defendant objects to sections (e) and (f) of this paragraph. It did not
 22 require a second or third medical opinion regarding his FMLA leave or order him
 23 to see Dr. Ekemo as a result of his FMLA leave.]

6. As a matter of law, was the City of Yakima negligent in the hiring or retention of Chief Granato?

EXHIBITS

The following exhibits may be received in evidence, if otherwise admissible, without further authentication, it being admitted that each is what it purports to be:

Plaintiff's proposed exhibits:

See Plaintiff's Exhibit List (Court Record 155).

Defendant's proposed exhibits:

See Defendant's Exhibit List (Ct. Rec. 151)

The following plaintiff's exhibits are objected to by defendant:

See Plaintiff's Objections to Defendant's Exhibits (Ct. Record 157).

The following defendant's exhibits are objected to by plaintiff:

See Defendants Objections to plaintiffs exhibits (Ct. Rec. 152)

Other than for impeachment purposes, the only exhibits admitted at trial will be exhibits identified herein or on a supplemental list filed at least fifteen days before trial, or at such earlier date as may have been set by the court, which supplemental list shall bear counsel's certificate that opposing counsel has had an opportunity to examine the exhibits. Parties will be granted leave to file additional exhibits during trial, the need for which could not be anticipated before trial, as long as the exhibit was properly disclosed in prior discovery in this case or there is a justifiable reason that the document was not disclosed in prior discovery.

Objections to exhibits, except as to relevancy, must be heard prior to trial.

HESELL
FETTERMAN

AGREED PRETRIAL ORDER - 27

Helsell Fetterman, LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

WITNESSES

The following witnesses may be called by plaintiff (if expert, give field of expertise):

See Plaintiff's Witness List (Court Record 156).

The following witnesses may be called by defendant (if expert, give field of expertise):

See the Defendant's Witness List (Crt. Rec. 151)

Other than for rebuttal purposes, no witnesses may be called unless listed above.

RELIEF SOUGHT

TRIAL

The parties estimate 10 days trial time. The parties stipulate and agree that (check the appropriate box):

X

Two alternate jurors are recommended.

If a juror is excused during trial for good cause the parties stipulate to a verdict by five jurors.

No stipulation reached as to above.

Proposed instructions and trial memoranda shall be filed and served in accordance with the timeline set forth in the scheduling order (Ct. Rec.).

HELSELL
FETTERMAN

ACTION BY THE COURT

The court has ruled that:

1.
2.

It is hereby ordered that the foregoing constitutes the pretrial order in the case and that upon the filing hereof all pleadings pass out of the case and LR 1.1 are superseded by this Order. This Order may be amended by consent of the parties and approval by the Court or by the Court to prevent manifest injustice.

DATED this ____ day of _____, 2009.

ROBERT H. WHALEY
United States District Court Judge

COPY RECEIVED AND APPROVED FOR ENTRY:

HELSELL FETTERMAN, LLP

JOHN G. BERGMANN, WSBA No. 0386
Attorney for Plaintiff Oscar Brownfield

LISH WHITSON, PLLC

s/Lish Whitson
LISH WHITSON, WSBA No. 5400
Attorney for Plaintiff Oscar Brownfield

HELSELL
FETTERMAN

AGREED PRETRIAL ORDER - 29

Helsell Fetterman, LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

1 JERRY MOBERG & ASSOCIATES
2

3 s/Jerry J. Moberg
4 JERRY J. MOBERG, WSBA No. 5282
Attorney for Defendant City of Yakima

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AGREED PRETRIAL ORDER - 30

HESELL
FETTERMAN

Helsell Fetterman, LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HESELL.COM

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

John G. Bergmann
 Helsell Fetterman LLP
 1001 Fourth Avenue, Suite 4200
 Seattle, WA 98154
jbergmann@helsell.com; lmckenzie@helsell.com

Lish Whitson
 Kristy Stell
 Lish Whitson PLLC
 800 Fifth Avenue, Suite 4000
 Seattle, WA 98104
lish.whitson@whitsonlaw.com
kristy.stell@whitsonlaw.com

Robert C. Tenney
 Meyer, Fluegge & Tenney, PS
 P.O. Box 22680
 Yakima, WA 98907-2680
tenney@mftlaw.com

Jerry J. Moberg
 Jerry Moberg & Associates
 451 Diamond Drive
 Ephrata, WA 98823
jjmoberg@canfield-associates.com

DATED this 5th day of May, 2009 at Seattle, Washington.

s/John G. Bergmann
 JOHN G. BERGMANN, WSBA No. 0386
 Attorney for Plaintiff Oscar Brownfield
jbergmann@helsell.com